11-364

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 206.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

WILLIAM E. DODGE, DANIEL JAMES, JAMES STOKES, WILLIAM E. DODGE, JR., D. WILLIS JAMES, ANSON P. STOKES, CHARLES C. DODGE, AND THOMAS STOKES, AS PHELPS, DODGE & CO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 2, 1877.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between William E. Dodge, Daniel James, James Stokes, William E. Dodge, jr., D. Willis James, Anson P. Stokes, Charles C. Dodge, & Thomas Stokes, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened to the great damage of the said Chester A. Arthur, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-seven, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the nineteenth day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

The foregoing writ is hereby allowed.
Feb'y 19th, 1877.

ALEXR. S. JOHNSON, *Cir. J.*

2 (Indorsed:) 4057. U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Wm. E. Dodge & others, defendants in error. Writ of error.

Due and timely service of the within writ of error is hereby admitted.
New York, Feb'y 19th, 1877.

MAN & PARSONS,
Def'ts in Error.

Filed Feb'y 20, 1877.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of *America*, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages numbered from four to
3 sixty-five inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, against Wm. E. Dodge and others, defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 20th day of September, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the said United States the one hundred and second.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

4 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of term of October, 1876, to wit, of the 14th, 15th, & 16th days of November, in the year of our Lord one thousand eight hundred and seventy six.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 24th day of December, 1874, in before the judges of the superior court of the city of New York, came William E. Dodge, Daniel James, James Stokes, William E. Dodge, junior, D. Willis James, Anson P. Stokes, Charles C. Dodge, and Thomas Stokes, composing the firm of Phelps, Dodge
5 & Co., by Man & Parsons, their attorneys, and brought into the said court before the aforesaid judges thereof, then there, their certain complaint against Chester A. Arthur, collector of the port of New York, &c., of a plea of trespass on the case upon promises, which said complaint follows in these words, that is to say:

6 Superior court of the city of New York.

WILLIAM E. DODGE, DANIEL JAMES, JAMES Stokes, William E. Dodge, junior, D. Willis James, Anson P. Stokes, Charles C. Dodge, and Thomas Stokes,
against
CHESTER A. ARTHUR, COLLECTOR OF THE port of New York.

The plaintiffs, by Man & Parsons, their attorneys, complain of the defendant:

1. That at all the times herein mentioned the plaintiffs were and that they still continue to be partners engaged in business in the city of New York under the firm name of Phelps, Dodge & Co.

2. That at all such times the defendant was, and that he still continues to be the collector of customs for the port of New York.

3. That between the 21st day of June, 1874, and the 18th day
7 of October, 1874, the plaintiffs imported into and entered at the port of New York, to wit, the collection district of the United States for the city of New York, from ports in the kingdom of Great Britain, large quantities of merchandize, to wit, tin in plates, and that upon such tin the defendant, as such collector, under color of laws of the United States for the collection of duties on imports, illegally exacted of and from the plaintiffs as duties certain large sums of money, which the plaintiffs then and there were compelled to and did pay to the said defendant as such collector, under protest, to obtain possession of the said merchandize.

That the sums of money so exacted from the plaintiffs, as such duties, were not authorized by law; notwithstanding which, until the payment thereof, the defendant as such collector unlawfully withheld the said merchandize from the plaintiffs.

That the following statement or Bill of particulars gives the
8 name of the importer, a description of the merchandize so imported, the places from which it was imported, the dates of the invoices, the dates of the entry at the custom-house, the precise amount of the duty claimed to have been exacted in excess, the dates of payment, the day and year on which the protest against the exaction thereof was filed, and the date of the appeal thereon duly taken by the plaintiffs to the Secretary of the Treasury, the date of decision on such appeal, the date of liquidation of the amount, and the number of the appeal.

That the said protest and appeal were in all respects conformable to the laws of the United States in such case made and provided.

9

Names of importers.	Tin in plates; number of boxes.	Place from which imported.	Name of vessel.	Date of invoice.	Date of entry.	Dutiable value.
				1874.	1874	
Phelps Dodge & Co..	4, 820	Liverpool	City of Richmond	June 10	June 22	$33, 990
" " "	8, 501	Cardiff	Pembroke	" "	" 23	65, 236
" " "	3, 625	Bristol	Arragon	" 13	" 29	49, 202
" " "	2, 230	Liverpool	China	" 15	" 30	26, 137
" " "	5, 309	....do	Spain	" 16	July 1	58, 092
" " "	5, 101	....do	Calabria	" 19	" 3	36, 996
" " "	1, 460	....do	Idaho	" 16	" 7	15, 529
" " "	3, 693	....do	Algeria	" 29	" 16	29, 830
" " "	676	....do	Cuba	July 3	" "	7, 433
" " "	10	Cardiff	Glamorgan	June 30	" 23	153
" " "	1, 085	Liverpool	Egypt	July 7	" 21	9, 056
" " "	1, 357	....do	Abyssinia	" 10	" 23	12, 372
" " "	210	Southampton.	Neckar	" 14	" 27	1, 923
" " "	621	Liverpool	Russia	" 17	" 29	7, 049
" " "	2, 709	....do	Calabria	" 24	August 7	21, 769
" " "	3, 776	Bristol	Arragon	" 29	" 14	30, 357
" " "	6, 863	Cardiff	Glamorgan	August 5	" 19	56, 797
" " "	1, 789	Liverpool	Algeria	" 3	" 20	16, 086
" " "	241	....do	Wisconsin	" 11	" 25	2, 896
" " "	2 909	....do	China	" 17	" 31	23, 118
" " "	1, 558	....do	The Queen	" 18	September 1	12, 020
" " "	195	....do	City of Richmond	" 19	" 1	1", 724
" " "	1, 113	....do	Russia	" 21	" 3	10, 742
" " "	45	..do	Java	" 24	" 7	2, 484
" " "	7, 165	Bristol	Great Western	" 26	" 11	57, 143
" " "	1, 987	Liverpool	Parthia	" 31	" 14	17, 017
" " "	911	....do	Spain	" "	" 15	5, 831
" " "	878	....do	Calabria	September 7	" 21	8, 200
" " "	1, 244	....do	Erin	" 8	" "	15, 673
" " "	7, 723	Cardiff	Glamorgan	" 9	" 23	55, 812
" " "	1, 650	Liverpool	Algeria	" 11	" "	14, 422
" " "	4, 201	....do	Batavia	" 14	" 28	31, 165
" " "	870	....do	Egypt	" 15	" "	9, 527
" " "	8, 115	Bristol	Arragon	" 12	" 20	61, 648
" " "	2, 334	Liverpool	Abyssinia	" 18	" 30	17, 937
" " "	4, 051	....do	Java	" 28	October 12	34, 072
" " "	950	....do	Wisconsin	" 22	" 6	7, 164
" " "	4, 442	....do	China	" 21	" 5	34, 841
" " "	2, 229	....do	Cuba	Angust 28	September 11	14, 733
" " "	1, 464	....do	England	" 25	" 9	10, 893
" " "	3, 849	....do	Bolivia	October 2	October 17	34, 198
" " "	2, 100	....do	Palm	August 10	August 28	13, 582
" " "	3, 693	Bristol	Great Western	June 30	July 18	30, 972
" " "	5, 429	Cardiff	Glamorgan	" "	" 15	46, 306
" " "	1, 368	Liverpool	The Queen	September 22	October 7	11, 955
" " "	1, 425	....do	Egypt	August 11	August 25	13, 669
" " "	2, 887	....do	Abyssinia	" 14	" 27	25, 881

10

4. That as to the following of

Names of importers.	Tin plates; No. of boxes	Place from which imported	Name of vessel.	Date of invoice.	Date of entry.	Dutiable value.
				1874.	1874.	
Phelps, Dodge & Co	621	Liverpool	Russia	July 17	July 29	$7, 049
" " "	2, 709	....do	Calabria	" 24	August 1	21, 769
" " "	3, 776	Bristol	Arragon	" 29	" 14	30, 357
" " "	6, 863	Cardiff	Glamorgan	August 5	" 19	56, 797
" " "	1, 789	Liverpool	Algeria	" 3	" 20	16, 086

Duty paid.	Amount exacted in excess of legal duty.	Dates of payment.	Dates of filing protest.	Date of appeal.	Date of decision of Secretary of Treasury.	Date of liquidation.	Number of appeal.
		1874.	1874.	1874.	1874.	1874.	
5,089 50	509 85	June 22	August 8	August 8	November 27	July 29	3847
9,785 40	978 54	" 23	" 10	" 10	October 23	September 17	2160
7,380 30	738 03	" 29	" 10	" 10	" "	" 7	2158
3,920 55	392 05	" 30	" 8	" 8	November 27	July 29	3851
8,700 30	870 03	July 1	" 10	" 10	October 23	September 21	2334
5,549 40	554 94	" 3	" 10	" 10	" "	" 3	2159
2,329 05	232 90	" 7	" 10	" 10	November 27	" 5	3848
4,474 50	447 45	" 16	July 24	July 24	October 21	" 3	2156
1,116 45	111 64	" "	" "	" "	September 29	" 5	530
22 95	2 29	" 23	August 10	August 10	October 23	" 3	1617
1,208 40	120 84	" 21	July 24	July 24	November 27	" 5	4026
1,855 80	185 58	" 23	" "	" "	September 29	" 5	851
288 45	28 84	" 27	" 28	" 28	October 23	" 21	1324
1,037 35	105 73	" 29	September 15	September 15	November 27	" 9	4027
3,265 35	326 53	August 7	October 2	October 2	" 18	" 25	3439
4,554 55	455 35	" 14	" 6	" 6	" 18	October 1	3438
8,519 55	851 45	" 19	" 17	" 17	" 27	" 7	3923
2,412 90	241 29	" 20	" 6	" 6	" 18	September 29	3437
434 41	43 41	" 25	September 3	September 3	October 23	November 5	1325
3,467 70	346 77	" 31	" 5	" 5	September 29	October 8	1300
1,803 00	180 30	September 1	" 7	" 7	October 24	" "	1326
1,548 45	154 84	" 1	" 8	" 8	November 27	October 8	3852
1,611 30	161 13	" 3	" 10	" 10	October 23	November 13	2157
372 60	37 26	" 7	" 12	" 12	November 18	October 25	3239
8,571 45	857 14	" 11	" 14	" 14	" 9	" 20	3046
2,552 55	255 25	" 14	" 15	" 15	September 29	" 24	1301
874 65	87 46	" 15	" 16	" 16	November 18	" 26	3241
1,230 00	123 03	" 21	" 23	" 24	" "	" 24	3237
2,350 95	235 09	" "	" "	" "	" 27	" 26	3800
8,371 80	837 18	" 23	" 24	" 29	" 8	" 20	3238
2,163 30	216 33	" "	" "	" "	" "	" 23	3240
4,674 75	467 47	" 28	October 6	October 6	" "	" 27	3236
1,429 05	142 90	" "	" "	" "	" "	" 24	3588
9,247 20	924 72	" 29	" "	" "	" "	" 19	3241
2,690 55	269 05	" 30	" "	" "	" "	" 17	3242
5,110 80	511 08	October 12	" 17	" 17	" 27	November 9	3819
1,074 60	107 46	" 6	October 9	October 9	December 18	" 12	5028
5,226 15	522 61	" 5	" "	" 9	" "	" 10	5029
2,209 95	220 79	September 11	September 14	September 14	" "	October 24	5030
1,633 95	163 39	" 9	" 12	" 12	" "		5031
5,129 70	512 97	October 17	October 31	Oct'r 31	" "	November 5	5032
2,037 30	203 73	August 28	September 5	Sept'r 5	" "	September 19	6561
4,645 80	464 58	July 18	July 24	July 24	" "	26	5034
6,945 90	694 59	" 15	" "	" "	" "	" 3	5035
1,793 25	179 32	October 17	October 9	October 9	" "	November 17	5580
2,650 35	265 03	August 25	September 3	September 3	" "	October 23	5862
3,897 15	389 71	" 27	" 3	" 3	" "	November 6	5865

the said importations, to wit:

Duty paid.	Amount exacted in excess of legal duty.	Date of payment.	Date of filing protest.	Date of appeal.	Date of decision of Secretary of Treasury.	Date of liquidation.	Number of appeal.
		1874.	1874.	1874.	1874.	1874.	
$1,057.35	$105 73	September 15	September 15	September 15	November 17	September 9	4027
3,265 35	326 53	September 29	October 2	October 2	" 18	" 25	3439
4,553 55	455 35	October 15	" 6	" 6	" "	October 1	3438
8,519 55	851 95	" 5	" 17	" 17	" 27	" 7	3923
2,412 90	241 29	" 5	" 6	" 6	" 18	September 29	3437

10½ the duty thereon was paid by the plaintiffs, with the assent of the defendant as such collector, at the rate of ninety per cent. of such rate of fifteen per cent. on the dutiable value, and the said importations were delivered by the said defendant to these plaintiffs in consideration of a certain bond to the United States given by these plaintiffs, conditioned that these plaintiffs, upon notice requiring them so to do, as at any time within ten days thereafter, would return, or cause to be returned to the custody of the said defendant all and singular such merchandize, and that these plaintiffs should, upon demand, or within ten days thereafter, well and truly pay, or cause to be paid to the defendant whatever excess of *of* duties or charges might be assessed
11 upon the final liquidation of the entry of such merchandize over and above the amount so paid by the plaintiffs.

That the defendant, as such collector, did thereafter increase the duties claimed upon the said merchandize to the amount alleged in the statement first hereinbefore set forth, and did claim the right to withhold such merchandize from these plaintiffs until the payment by them of such increased duties, and that for the purpose of obtaining and passing possession of such merchandize these plaintiffs were compelled to, and that under such protest as aforesaid they did, pay to the defendant as such collector the said duties at such increased rate, they then and there protesting against the same as aforesaid.

The plaintiffs therefore demand judgment against the defendant in the sum of twenty-five thousand dollars, gold coin of the United States, damages sustained by them by reason of the premises, with interest thereon from July 24th, 1874, and the costs of this action.

12 MAN & PARSONS,
Pl'ffs' Attorneys.

CITY & COUNTY OF NEW YORK, *ss:*

William E. Dodge, jr., being duly sworn, deposes and says:

I am one of the plaintiffs in this action. I have read the foregoing complaint, and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated upon information and belief; as to which I believe it to be true.

W. E. DODGE, JUN'R.

Sworn to before me this 21st day of December, 1874.

THO'S J. SANSON,
Notary Public, New York Co.

(Endorsed:) N. Y. superior court. Willi m E. Dodge & o'rs ag'st Chester A. Arthur, collector, &c. Copy. Complaint. Man & Parsons, pl'ffs att'ys, 56 Wall st.

13 And thereupon on the 3d day of February, 1875, by writ of certiorari, this cause was removed into the circuit court of the United States for the southern district of New York, in the second circuit.

And afterwards, to wit, on the 8th day of March, 1875, came the defendant, Chester A. Arthur, and defends the wrong and injury when, &c.

14 Circuit court of the United States for the southern district of New York, in the second circuit.

WILLIAM E. DODGE, DANIEL JAMES, JAMES Stokes, William E. Dodge, junior, D. Willis James, Anson P. Stokes, Charles E. Dodge, and Thomas Stokes
against
CHESTER A. ARTHUR, COLLECTOR OF THE port of New York.

The defendant herein, for amended answer to the complaint of the plaintiffs herein, says:

I. That he admits he was at the times in said complaint mentioned collector of the port of New York, and in such official capacity received payment from the plaintiffs for and on account of duties due to the United States under the laws thereof upon certain importations of merchandize imported by said plaintiffs into the port of New York from foreign countries.

II. And defendant alleges that any and all monies received by
15 him from plaintiffs at the times in said complaint mentioned were paid by said plaintiffs as a debt due by them to the United States, and not otherwise, and were received by defendant by virtue of his office as said collector, and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter and before the commencement of this action or the service of any protest paid into the Treasury of the United States; and that the amounts of said monies so received from plaintiffs were the amounts due from them to the United States, according to the rate of duty imposed by law upon the several articles of merchandize by them imported and assessed with duty; and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' import entry thereof were collected by defendant from the plaintiffs.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise descrip-
16 tion of the merchandize contained in the several packages referred to in said complaint by the marks and numbers and descriptions there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandize was dutiable according to the laws of the United States at the rates at which the same were assessed.

IV. And defendant, further answering, admits that plaintiffs filed with defendant certain protests; but he denies that he has sufficient information to form a belief as to whether upon the importations in question protests and appeals were made by the plaintiffs conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as they may be advised.

V. And as to any other allegations in said complaint contained not hereinbefore fully answered or admitted, defendant denies the same and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

GEO. BLISS,
U. S. Att'y for Defendant.

17 And now, at this day, to wit, the 14th day of November, 1876, being as yet of the said October term, 1876, before the said Nathaniel Shipman, justice, at the new post-office, in the city of New York, came the said William E. Dodge, James Stokes, William E. Dodge, junior, D. Willis James, Anson P. Stokes, Charles C. Dodge, and Thomas Stokes, the said Daniel James having prior to the trial of this cause died, by Man & Parsons, their attorneys, as aforesaid; and the said justice before whom the said issue was tried has sent hither his record had before him in these words:

Afterwards, that is to say, on the 14th, 15th, and 16th days of November, 1876, at the place before mentioned, before the justice of the said court, came as well the above-named plaintiffs as the above-named defendant, by their respective attorneys aforesaid, and the jurors of the jury summoned to try the said issue being called also came, who, to speak the truth of the matters aforesaid, being chosen, tried, and sworn, say, upon their oath, by direction of the said justice, that they
18 find for the plaintiffs, in manner and form as the said plaintiffs have above complained against him; and they assess the damages of the said plaintiffs by reason of the premises, over and above their costs and charges by them about this suit in their behalf expended, to sixteen thousand six hundred and forty-seven $\frac{95}{100}$ (16,647.95) dollars, gold, and two thousand six hundred and ninety $\frac{02}{100}$ dollars, currency, interest thereon.

Therefore it is considered that the said surviving plaintiffs do recover against the said defendants their said damages, costs, and charges by the jurors aforesaid in form aforesaid assessed, and also the sum of seventy-eight $\frac{29}{100}$ dollars, currency, for their costs and charges by the court here adjudged, of increase to the plaintiffs, with their assent, and also the sum of one hundred and three $\frac{58}{100}$ dollars, currency, interest on said verdict; in all, the sum of sixteen thousand six hun-
19 dred and forty-seven $\frac{95}{100}$ dollars, gold, and two thousand seven hundred and ninety-three $\frac{60}{100}$ dollars, currency.

And the defendants in mercy, &c.

J. M. DEUEL,
Dep. Clerk.

Judgment signed this 19th day of Dec., A. D. 1876.

J. M. DEUEL,
Dep. Clk.

(Endorsed:) U. S. circuit *clerk*, southern district of N. Y. William E. Dodge et al. ag'st Chester A. Arthur, collector, &c. Judgment-roll. Man & Parsons, pl'ffs' att'ys, 56 Wall st., N. Y. U. S. No. 10330. Filed Dec. 19, 1876.

20 *Bill of exceptions.*

U. S. circuit court, So. district of New York.

WILLIAM E. DODGE & AL., PLAINTIFFS,
vs.
CHESTER A. ARTHUR, DEFENDANT.

Afterwards, to wit, on the fourteenth day of November, 1876, at a stated term of this court, begun and holden at the city of New York, to wit, on the third Monday of October, 1876, before honorable Nathan-

iel Shipman, district judge of the United States for the district of Connecticut, appointed to hold the said circuit, according to the form of the statute in such case made and provided, the aforesaid issues so joined as between the said parties, as by the record more fully appears, came on to be tried by a jury duly empannelled and sworn for that purpose, the said plaintiffs being represented by William M. Evarts and
21 John E. Parsons, esq., and the defendant being represented by H. E. Tremain, esq.

And in the course of the trial the said counsel for the defendant did take and allege sundry exceptions to the rulings and charges of the court, and to the refusal of the court to give instructions to the jury as then and there prayed for by him, and to the refusal of the court to submit the evidence in said cause to the jury, which said exceptions are hereinafter specially set forth.

Upon the said trial the following proceedings, among other things, occurred:

To sustain the issues on the part of the plaintiffs the latter adduced evidence showing the importation from a foreign country into the port of New York by the plaintiffs at and about the times specified in the bill of particulars, and between the 18th day of October, 1874, and the 28th day of August, 1874, of certain articles of merchandise hereinafter more particularly described, upon which the defendant, as collect-
22 or of the port of New York, had exacted duties at and after the rate of fifteen per centum ad valorem, which said duties plaintiffs paid and protested against pursuant to the statutes, and which said protest was in terms, and upon each importation substantially like the following protest, which refers to one of said importations:

SIR: We do hereby protest against the payment of 15 per cent. charged on sixteen hundred and fifty (1650) boxes tin plates of the dutiable value of $14,422 gold, contained in our entry made on the 25th day of September, 1874, per S. S. Algeria, from Liverpool, England, in cases marked P. D. & Co., and various other marks, claiming that under existing laws said goods are only liable to a duty of 90 per cent. of 15 per cent. or 13½ per cent., because title 33, section 2503, of the codification of the revenue laws provides certain rates of duty on articles which are mentioned in Schedule E, of section 2504, with the provisions that all articles mentioned in 2503 shall have the benefit of 10 per cent. reduction—one of the provisions—on all metals not herein other-
23 wise provided for, and on all manufactures of, &c., &c., includes tin plate, and pay the amount exacted in order to get possession of the goods, and look to you for refund of the same.

Dated New York, September 29th, 1874.

In due season, after protest and liquidation, plaintiffs appealed to the Secretary of the Treasury, who affirmed the decision of the collector, and thereafter, pursuant to the statute, this action was brought.

The plaintiffs placed in evidence the invoices of the importations in question that were presented to the N. Y. custom-house, the custom-house entries that were made upon each of said invoices, and the protests, appeals, and decisions thereon. The contents of these documents are not necessary to be set out in this bill of exceptions, except in so far as they are found hereinafter referred to or recited. The pa-
24 pers establish the details stated in the bill of particulars. As to the description of the merchandize in question the following proof was received:

WILLIAM E. DODGE, Jr., being examined by plaintiffs' counsel, said:

I am one of the plaintiffs, the firm of Phelps, Dodge & Co., who are and have been importers of tin for very many years. I am familiar with the goods in question, which consist of tin plates and terne plates.

Q. Is there any difference, and if so, what is the difference, between tin plates and terne plates?

A. The difference is only in the coating; both are virtually the same thing; one has a little lead mixed with the tin bath, to dull the surface; but they are the same thing in the trade, virtually. I am conversant with the manufacture thoroughly.

Q. Is there any such article as tin in plates?

A. It is an article that has been known by all manufacturers for 60 years.

Q. Is there such an article, and has there been for many years
25 an article, known as tin in plates?

A. There has been such an article known as tin in plates. It is made of sheet iron carefully prepared, and then dipped in tin and coated with tin, and so prepared for market. There is and has been during the same period an article commercially known as "terne," that is the same article, made by the same process, excepting that a small portion of lead is mixed with the tin bath in which the iron is put. The effect produced by the change resulting from the admixture of lead is simply to dull the surface. It is prepared for roofing purposes. The invoices in this case describe the article whether it is tin or terne, so that by looking at the invoices I can say whether the article is tin plates or terne plates.

On being cross-examined, among other things, the testimony of the witness was as follows:

We are claiming in this suit upon two articles which are virtually one article; and are claiming under the clause of the tariff which
26 names plates, terne, and taggers. We are claiming virtually upon one kind of merchandise. There are two things, as far as the same class and exactly the same thing can be, under two names. The tin has not lead in it. One is purchased as having no lead in it. The presumption and understanding is, that in all invoices, where nothing but tin plates is mentioned in the invoice, there is no lead. I judge this is so as a matter of fact, and as a merchant I judge so, except where the designation "terne" plate is put in; tin and terne plates are virtually the same thing.

Q. I understand you to say further, that where terne is mentioned upon these invoices it refers to an article that is coated in a bath with a little lead; that is so, is it not?

Ans. The invoices are all made out as tin plates; and then the distinction is made simply as a matter that guides us as to which are the tin and which are the "terne" plates. They are recognized as the same thing in all the tariffs and commercially. Upon those invoices
27 where the term "terne" is referred to, the article was indicated that was coated in a bath in which there was some admixture of lead. And in these invoices where the term "terne was not mentioned, but simply the term "tin plate" was mentioned, the article referred to is coated in a bath that has no lead in it. In both cases the bath is the same; but in one case there is a little admixture of lead to change the surface. The tin plate (where the word "terne" is not used) is coated in a bath having no lead in it. The words tin plate are used for tin plates proper and terne plates in the invoices. There are some instances upon these very invoices where tin plates may mean—where the

article referred to is, in fact, an article dipped in a bath having some lead in it. I judge and believe as a matter of fact that it is not true that a large number of tin plates of commerce are, in fact, dipped in a bath having some lead in it, but I cannot tell; I do not know certainly. The lead would be detected immediately in the appearance of the tin.

It is a question I never have heard raised before. The different
28 grades of the articles I have described are distinguished one from the other by their size and thickness and surface. Articles of the same size and thickness and surface sometimes sell for different prices, but that depends upon the quality of the iron of which they are made and upon the brand. One brand has a better name than another, and therefore brings a better price.

(The invoice of goods shipped on board the Algeria, and sworn to, September 12, 1874, and already in evidence, is shown witness.)

All that is necessary to incorporate in the bill in regard to this invoice is, that it is an invoice of "1,650 boxes of tin plates" of various sizes and descriptions, and of "100 boxes of black taggers." I should judge, as a matter of fact, that none of the goods included under the "1,650 boxes of tin plates" upon the invoice by the "Algeria" have any lead in the bath in which they are prepared, and I do not think the "100 boxes of black taggers" are included in the tin plates. Leaving out the black taggers there is nothing in that invoice designated as having lead in it.

29 (As a matter of fact there is nothing in that invoice having lead in it.) This invoice, I judge, represents an article that is prepared as I have described, without any lead.

Q. What is tinned sheet-iron?

A. Tinned sheet-iron is tinned sheet-iron; it is sheet-iron tinned. It is the same article as that in this invoice, and made in the same way. I have seen these plates made. The sheet-iron, as a preliminary work, is rolled into sheets, then goes through several processes by which its surface is cleaned of scales, and so prepared; it is then cut into sizes and dipped into a bath of tin. The bath consists of molten tin or tin with some lead mixed with it in an iron pot; into it the iron is put, and then it goes through either rolling or polishing process afterwards, by which the surface is prepared. I believe all of these goods are prepared in that way.

Q. The only distinction being that some of them have more lead in them than others?

A. In the invoice you showed me, that by the Algeria before referred to, there was no lead, but in many of the invoices there is tin with the lead.

(Witness being shown invoice of goods shipped on board the Java, sworn to September 29, 1874, already in evidence, containing de-
30 scription "4,051 boxes tin plates, 95 terne, etc.")

There are several cases there. In the same package all the goods either have or have not lead, but in the same invoice the goods having lead are intermingled with those having no lead. The brand there is Radnagle, and in it we find two kinds. That which has some lead in its coating is not quite as valuable commercially as that which is without any lead. All those articles that I have described as terne plates are called commercially, interchangeably, "terne plates" and "tin plates," and in lists of shipments they are all put in just as the invoices are made out, so many boxes of tin plates.

Q. So that "terne plates" are a particular kind of tin plates?

Ans. So we judge them to be, and so we designate them.

Q. Both articles being tinned sheet-iron with or without lead in the bath?

A. Yes; that is the difference.

Q. Does not tin come to this market in other forms?

A. The pure tin comes to this market in other forms; for instance, in the form of what they call pigs. That is in the shape that it comes from the smelting pots.

Q. In what other form is it known in the market besides "pigs" and bars?

31 Ans. Pigs and bars and strips. Blocks, pigs, and bars are interchangeable terms. I am speaking of crude tin. I do not remember of its coming in any other form. I do not think tin foil is made here now. It is imported. Tin foil is not a pure manufacture of tin, so that I should not call it pure. It is more than two-thirds lead. Tin may be manufactured into other things that I do not remember at the moment. Sheet-iron comes here without any tin coating. Taggers are simply tin plates rolled thinner, about half the thickness of tin plates. It is a special kind of "tin plates" made in the same way, only that the sheet-iron is a little thinner. It has no coating of lead in it. We do not claim on the black taggers. Taggers tin is not the same as black taggers; it is different. Black taggers is simply iron, and is a quite different thing from taggers tin. Black taggers is simply the sheet-iron without the coating of tin, and with a polished surface for particular purposes. Taggers tin is used for a hundred various purposes in the same way than tin plates are used. Tin plates and terne plates

32 are used for very much the same purposes. These articles, taggers tin and terne tin, &c., are commercially dealt in by the same line of dealers, and they are all commercially regarded under the general class of "tin plates." I think we paid duty on these goods at the rate of 15 per cent. ad valorem according to the invoiced values. From this paper (the invoice by the Java, dated September 20, 1874), I cannot tell the amount of duty paid.

(Witness is shown invoice and entry by the Algeria, the invoice being dated September 11, 1874.)

The entire duty paid was $2,163.30. The amount of duty paid upon the goods in question in that invoice is $2,163.30, at the rate of 15 per cent. ad valorem.

Q. If a calculation were made at the rate of 2½ cents per pound upon the goods upon which you paid duty at the sum just stated, $2,163.30, would it or wouldn't it exceed that sum?

(Objected to.)

The COURT. I do not see that this question is material until something is shown to the effect that this article is not what is know' commercially as "tin in plates."

33 (Objection sustained.

To this decision and ruling defendant's counsel then and there duly excepted.)

Q. Will you state, if you can, the weight or about the weight, or approximate it, if your experience as a merchant will enable you to do so, of the goods in question upon the invoice just shown you?

(Objected to as immaterial. Objection sustained, and defendant's counsel duly excepted.)

"Tin plates" is the general commercial name of these articles. "Tin plates" is one general commercial term. "Tin in plates" is a commercial term as such.

Q. Tin in plates?

A. It is, because that is the designation always at the custom-house and in all countries, about it. I judge that "tin in plates" is a commercial term as such; it is, from my experience as a merchant. The reason that you do not find that phrase in any of these papers is because "tin plates" is a shorter and quicker designation. It is more generally used as the commercial designation. I cannot give you instances of a
34 merchant calling at our store and asking for tin in plates. I do not know that I have ever heard of instances of that kind; I cannot say that I have ever personally experienced such an instance; I cannot say that I have not experienced such an inquiry. When I first went into the business, 25 or 26 years ago, I first heard "tin in plates" spoken of in those terms. I do not understand that there is any difference in commerce between "tin in plates" and "tin plates." As a matter of fact, my experience as a commercial man has not led me to observe any difference. I do not remember instances where goods like these in question have been billed and invoiced as "tin in plates."

Q. They are not generally invoiced in that way?

A. They are generally invoiced by the shorter designation.

Q. Is "tin in sheets" a commercial term?

A. I have heard the term used sometimes; yes, sir.

Q. Is it a commercial term?

A. The general commercial term is "tin plates" or "tin in plates."

Q. "Tin in sheets" is simply another method of describing tin plates, is it?

35 Ans. I judge so, sir; it is very seldom used, because "tin in sheets" might apply to tin foil; still it is used sometimes.

Q. "Tin in plates" also describes, does it not, some of the articles upon these invoices that are spoken of as taggers tin?

A. It does; yes, sir; and tin plates also describe them. Taggers tin are made in the same way that tin plates are except that the sheet-iron is a little different.

Q. I show you invoice and entry of the Idaho, invoice numbered 1875, dated July, 1874, and the entry liqu'ated September 5th, 1874, which relates to an importation of 1,460 boxes of the article in question upon which it appears you paid a duty of $2,329.45; I show you that invoice and the entry and the bill of lading attached to the entry, and I ask you to state from that bill of lading what the weight of *the* those 1,460 boxes was.

(Objected to.)

(To the Court:) I show the bill of lading referred to, and ask him (the witness) if that is not the bill of lading for the goods referred to in this paper, i. e., the entry.

The COURT. My idea is to exclude this until it is claimed that
36 the article is something more than tin in plates or is tin in plates galvanized or coated with any metal other than by electric battery.

DEFENDANT'S COUNSEL. I show the witness the invoice and entry referred to, and ask him if that is not the bill of lading of the goods referred to in said invoice and entry. I offer the bill of lading for the purpose of proving weight in reference to the particular invoice now shown witness.

The COURT. For what purpose?

DEFENDANT'S COUNSEL. For the purpose of laying the foundation to ask this witness the question as to the net weight of the goods referred to in said invoice.

(Offer denied and question excluded and defendant's counsel duly excepted.)

DEFENDANT'S COUNSEL. I offer to prove that the amount of duties upon all the goods in controversy in this action, if calculated at ninety per cent. of 2½ cents per pound, will exceed the amount paid by the plaintiffs upon the same goods at the rate of fifteen per cent. ad valorem.

(Testimony under this offer being objected to was excluded
37 by the court as immaterial as the case stands and at present, and defendant's counsel duly excepted.)

Q. If you were asked to say that the amount of duty upon these invoices here would be more at 2½ cents a pound than at the rate of 15 per cent. ad valorem, as you paid, as a merchant, would not your experience enable you to answer that question?

(Objected to as immaterial. Objection sustained and an exception was duly taken by defendant's counsel.)

Redirect:

Upon redirect examination by plaintiffs' counsel, among other things the testimony of the witness was as follows:

I do not deal in tin foil as tin foil is sold here. I know what its composition is.

Q. What is the composition of tin foil?

(Objected to as immaterial and irrelevant. Objection overruled and defendant's counsel duly excepts.)

A. No; it is made of an ingot, a thick ingot of lead with a small ingot of tin above and below it, and the three are rolled out to-
38 gether forming one surface of which the body is lead and the surface is tin. It is rolled to a very thin consistency. That is the usual course of manufacture. I have never known that article designated in commerce by any other name than "foil."

Q. How is the article which you have described known in commerce, by what name, the article which consists of a small ingot of tin and a large ingot of lead rolled into a very thin leaf?

(Objected to as immaterial. Objection overruled and exception was duly taken by defendant's counsel.)

A. Known as tin foil. I know of no other name. I have never heard it described by any other name.

Q. Have you ever heard the term "sheet," or "plate" used to describe the article of tin foil, the composition you have given us?

(Objected to. Objection overruled, and exception was duly taken by defendant's counsel.)

Ans. No; never. The only commercial way in which I know
39 that pure tin comes to this market is pigs or blocks or bars. Pure tin never comes in plates or sheets.

Q. You have described the process by which tin plates or tin in plates is made; which is the larger constituent of value, the iron or the tin?

(Objected to.)

PLAINTIFFS' COUNSEL. Your honor will permit me to call your attention to this provision of the act, subdivision 915, page 158, of Heyl: "And as all manufacturers of iron or steel, of which such metals or either of them shall be the component part of chief value." We propose to show that this article being a compound article, the chief value is the iron, so as to claim that the 10 per cent. reduction is due under that as well as under the 916 subdivision.

(Objected to, as the question is asked about a clause in the tariff act not referred to in the protest, and not included therein, and that the testimony under the language of the protest is irrelevant and immaterial.)

PLAINTIFFS' COUNSEL. The protest is general.

(See protest hereinbefore set forth.)

40 DEFENDANT'S COUNSEL. I take the additional ground also that this witness is not shown to be competent to speak of the comparative value of component materials.

(Objection overruled; defendant's counsel duly excepts.)

A. I know the relation in value between the tin and the iron in tin plates or tin in plates.

Q. What is the relative value? Which component part is of the larger value?

(Objected to by def't's counsel on same ground as previously stated. Objection overruled. Exception.)

Ans. The iron is of much the larger value.

Upon recross examination, among other things the testimony of the witness was as follows:

I did not say that tin foil was never pure tin. I never have known pure tin to come in sheets; it is not known commercially in sheets at all. I have never known it to be imported so. I did not say that tin foil always had other metal in it except tin. I said that is the present way of manufacturing it. I cannot tell whether it has always been manufactured in the same way. I judge the tin foil in the market at pres-
41 ent does not differ from the tin foil that has been in the market for the last 10 or 20 years. The tin foil that has been in the market during that time is not, as I understand it, the pure article. I know of no tin foil that is the pure article except it may be used for dentist purposes, or something of that kind. Tin foil, as I have seen it, always comes in long rolls, sheets in rolls. I cannot give you the exact proportion of its component parts, but it has a larger proportion of lead than of tin, the lead being in the inside, and the tin making the two outside coverings. Lead forms the body of the article. I do not know of it as an article of commerce without any lead in it, and I do not think it is. I never heard of it as such; it may be and I not know of it.

(The invoice of goods shipped on board the Java, above referred to, is again shown witness.)

It is sufficient for the purposes of this bill to state that this was an invoice of "4,051 boxes of tin plates," of various sizes and descriptions, and of "160 boxes of black taggers, &c.," and that among the
42 varieties of "tin plates" is one represented by words and figures as follows: "Melyn 100 12x12, 1 C. 357, £175."

In answer to questions the witness, resuming, then said:

Taking a piece of tin plate represented upon this invoice by the Java as 12x12—35 shillings. I think sheet-iron of that size and quality is not sold in the market here without being tinned. It is sold in England. It is sold there for the purpose of manufacturing these tin plates. I cannot say whether it is sold there for that purpose only, but I know of no other purpose. I think it is not now an article of commerce. These tin plates are mostly made abroad. The component part of iron as it is prepared to receive the tin is of much more value than the tin. Taking a particular piece designated as 12x12 representing a particular size and quality of tin plate, that represents 112 pounds of tin plates of that particular size; the sheet iron in that tin plate is of much more value than the tin coating that covers it. In giving these relative values, I mean both the values at the places where the tin plates are made,

and the values here as well; they are made and sold principally in South Wales and England; a piece of sheet-iron of this size 12x12 is of value here; it is marketable, but is cheaper to tin it there than here. I
43 can arrive at the market value here for such a piece of sheet-iron if I had reference to my books. From my general knowledge I say that if those sheets of iron represented in that box of tin, "12x12 T. C. tin," had been here untinned the iron would have been much more valuable here than the quantity of tin on them; certainly twice as valuable and perhaps more. The tinning of this sheet-iron does add to its value, but it does not double it; there are 103 or 104 pounds of iron in a box against 5 or 6 pounds of tin; when there is any lead in this bath into which the sheet-iron is plunged while being tinned, I cannot tell about what proportion or per cent. of lead there is therein; it varies with all the makers.

In the lowest grade of terne plate upon our invoice, I cannot tell and have no knowledge whether the amount of lead in the bath would exceed three per cent. I should judge that it would be very much larger, but I do not know. I do not know of any particular line of percentage of lead where a particular thing cease to be called a terne plate. Tin plates under their general name have lead in them, but tin plates that are merely tinned do not have; they are all tin plates, and a particular class of tin plates are called terne plates. This iron at that time
44 (the time of its purchase in October, 1874) was worth 35 shillings per 100 weight in England; it would be worth £35 per ton. I have no remembrance of the exact value of that quality of iron at that time. Iron is increased in value by the manipulations, but I cannot tell how much, nor give any idea. I do not buy any of that kind.

The sheet iron is usually bought in this country and not there. The duty prevents the importing of it. We did not at that time buy iron cut in these small pieces, 12x12. I should think and judge that in 1874 such sheet iron as has been referred to here, before being tinned and of about these sizes 12x12, would very much exceed £17 to £20 in value. I cannot tell, but it is my memory and recollection. I cannot tell whether it is worth £25, 104 pounds of iron against 6 pounds of tin. The proportionate value can be easily got at. These are the relative proportions of tin and iron in tin plates. The cost of labor goes largely to increase its value. The raw ore would be of no value. Labor makes a part of the value of any metal, as I understand it—the labor in making the iron. Labor is a part of the value of everything that is made. In
45 stating that in these particular tin plates sheet-iron is worth more than tin, I refer to the condition of both the sheet-iron and the tin; of course, it includes labor all through.

Q. I speak of the tin. I am referring to the tin in the molten bath.

Ans. That tin has gone through various processes of labor before it gets there, and I have estimated that, of course. I considered labor in my estimate.

Being interrogated by plaintiffs' counsel, the witness said:

I judge, and it is my recollection, that the testimony I gave in reference to the relation between the value of the component parts of iron and tin cover the entire period in question; that is, during all of the year 1874.

At this point the plaintiffs rested their case.

DEFENDANT'S TESTIMONY.

To sustain the issues on the part of the defendant, his counsel called certain witnesses, whose testimony was substantially as follows:

JOHN S. DICKERSON, being examined by defendant's counsel, said:

My business is importer of metals, and I have been in that business about 20 years, and am familiar with the different *firms* in which
46 tin comes to the market in this country. I have dealt in tin plates and articles of that general character.

Q. Is tin plate a commercial term?

A. Yes, sir.

Q. Is "terne plate" a commercial term?

A. Yes, sir; they are called "ternes" sometimes for short. That refers to terne plates. "Ternes" and "terne plates" are interchangeable and synonymous. The phrase "tin in plates or sheets" has no peculiar technical commercial signification, nor any peculiar commercial signification apart from its ordinary meaning, that I know of; nor is it generally a commercial term as such in trade and commerce, that I know of. I do not think I have ever heard it used as a commercial term. As a matter of fact articles manufactured from plates or sheets of iron and tinned in a bath of tin, or with tin and lead, are described upon bills, invoices, and other commercial papers as tin and terne plates. These ternes are not interchangeable in a general sense. I am an importer of tin plates. I import both tin and terne plates. Terne plates are a species of tin plates. The only other *firms* in which I know of the metal tin coming to this market are blocks and bars, sometimes
47 called "ingots," and sometimes called "pigs." I do not know of its being imported in foil (I am not enough acquainted with the article "tin foil" to give information about it). I know of such an article as tin foil. I think there are two kinds—one pure tin for dentist purposes, but the great bulk of it is an admixture of tin and lead. It comes in two ways, according to the purposes for which it is intended. In manufacturing tin plates the sheet iron is rolled to a suitable thickness for the article wanted. It is then prepared and what is called "pickled" in an acid to remove the scale. Then to make tin plates it is dipped into a bath of molten tin, and then it is rubbed off or comes through rollers and it is finished. The manufacturers claim that this molten bath is always composed entirely of tin, and, so far as I know, it is. Some of the cheaper grades put in a small admixture of lead, but not sufficient to be noticeable, else it would destroy the article. When a substantial amount of lead is put in this molten bath, it become a manufacture recognized as "terne." This particular class of articles, "terne plates," always comes in specific sizes in boxes. It is not bought and sold by the weight but by the box. The value is regulated by
48 the size and weight as well as the quality. This coating of the sheet-iron with tin in this tin bath is not done by electric batteries.

On being cross-examined, among other things, the testimony of the witness was as follows:

I have been an importer of tin and terne plates about 20 years.

Q. Are you familiar with the portions of the tariff laws which have applied during the period you have been an importer to the article which you have described?

(Question objected to as incompetent, irrelevant and immaterial. Objection overruled, and defendant's counsel duly excepted.)

A. I believe I am, sir.

Q. During this period that you have been an importer, have you had constant occasion to pass through the custom-house those articles which you have described?

(Question objected to as incompetent, irrelevant and immaterial. Objection overruled and defendant's counsel duly excepted.)

Ans. Yes, sir.

Q. In your custom-house business have you not always used the term "tin plates" to describe the article which in the revenue laws is described as tin in plates, and which, under the act of 1872, pay 15 per cent. ad valorem duty?

49 (Question objected to as incompetent, irrelevant, and immaterial. Objection overruled, and defendant's counsel duly excepted.)

A. I have always called them tin plates, although they were in the tariff as tin in plates. I have treated the term as synonymous.

Redirect examination:

Among other things, the testimony of the witness was as follows:

The same article is called in the tariff act tin in plates, and in an invoice tin plates. I should say that tin in sheets described tin plates. As a matter of fact, it describes nothing else, that I know of. There are a number of sheets of tin in a box of tin plate. They are tinned sheet-iron.

Q. You have stated how you described this article in your dealings with the government as an importer, in answer to plaintiffs' counsel. Will you please state whether, according to the market-value abroad in the fall of 1874, upon any particular invoice, a calculation to be made at fifteen per cent. ad valorem would result in an amount of duty more or less than a calculation at 2½ cents a pound?

(Evidence under this question was objected to. Objection sus-
50 tained, and defendant's counsel duly excepted.)

Defendant's counsel then renewed the offer already made before in the cross-examination of Mr. Dodge, viz, to prove that according to the foreign value of the goods in question, at the time of their importation, a duty of fifteen per centum ad valorem would be much less duty on the same goods than a specific duty calculated at two and one-half cents per pound, or ninety per centum of two and one-half cents per pound. The court refused, as the case stands, to receive any testimony under this offer, and to said decision and ruling defendant's counsel duly excepted.

LEWIS MCMULLEN, being called by defendant, and examined by defendant's counsel, among other things testified as follows:

I am an examiner in the custom-house, in the metal department—the hardware department—and have been there 24 years, and am familiar with the metals that have come to this port during that period, and with the designation in trade and commerce of these metals. I am familiar with tin in its different forms. It is an article of commerce in three forms, viz, in pigs or blocks, in bars, and in tin foil. It is pure tin. I speak of pure tin. Some tin foil is a pure tin. The term tin in
51 plates, or sheets, is not a commercial term. I never heard it in trade and commerce, or otherwise, except in the tariff, excepting tin foil. That is tin in sheets. It is commercially known as tin foil. Terne plates are tin plates, with the foreign substance of lead introduced in connection with the tin, although tin plates are not "terne" plates;

that is the distinction. Some tin plates are terne plates. Terne plates are tin plates, known under the general term tin plates; but tin plates are not always terne plates. Tin plates with no foreign substance in them at all are an article of commerce. They are made in this country to a very limited extent, I believe. I do not know whether they are made both with and without lead in this country.

On being cross-examined, among other things the witness testified as follows:

Q. Are you familiar with the term "tin in plates," or "tin in sheets," as used in the tariff laws for the past few years?

(Objected to as incompetent, irrelevant and immaterial. Objection overruled, and defendant's counsel duly excepted.)

Ans. Merely in connection with the whole subject.

Q. During the past 10 or 15 years at the custom-house have
52 you and the merchants with whom you have dealt had continuously occasion to apply the term tin in plate to a particular commodity?

(Objected to as incompetent, irrelevant, & immaterial. Objection overruled. Def't's counsel excepts.)

A. Yes; that is the commodity which I describe as tin plates.

EDWARD A. MAN, being examined by defendant's counsel, among other things testified as follows:

My business is liquidating clerk in the custom-house; I have examined the invoices and entries that are in evidence in this suit at the request of defendant's counsel for the purpose of making a calculation based upon them.

Q. Did you make the calculation for the purpose of ascertaining whether if the duty upon these entries were calculated at the rate of 2½ cents a pound, the duty as such would largely exceed fifteen per cent. ad valorem as liquidated?

(Objected to, objection sustained, and defendant's counsel duly excepted.)

Q. Will you take these invoices and entries (referring to all in the case & in evidence) and make the following calculation, viz, separate the amount of duty upon all the articles specified in the various in-
53 voices as "terne," and state what is that amount separately from the balance of the articles in controversy in this suit. Please do that and let me have the result to-morrow morning.

(To the court.) We wish to know and place upon record in this case the amount of duty paid by the plaintiffs upon the article specified in the invoices as "terne plates," as distinct from the amount paid upon the articles designated in the invoice as "taggers tin" and tin plates, for the purpose of presenting to the court the questions of law upon them, as we may be right in respect to one and the plaintiffs right in respect to the other.

WITNESS. I will make the calculation you ask. I have calculated what is the total amount of duty paid at the rate of fifteen per cent. upon the articles specified in the invoices as terne plates. It is $56,466.45, ten per cent. upon which would be $5,646.64. I have calculated the duty on the tin, and it is $110,217.45, ten per cent. of which would be $11,021.74. The total duties on the tin plates are 166,683.90; I have not included the "black taggers."

Here the defendant rested.

The plaintiffs then adduced the following testimony in rebuttal:

54 JOHN M. BRUCE, being called by plaintiffs and examined by plaintiffs' counsel, among other things testified as follows:

My firm is Bruce & Crook; we are importers and dealers in metals and that has been the business of the firm about 30 years; I have been familiar with that kind of business as carried on in the city of New York 35 years.

Q. Is there such an article and has there been for many years—state how long there has been such an article known to commerce as galvanized iron and galvanized tin. What is the process of preparation—galvanized iron, for instance?

(Objected to as immaterial & irrelevant. Objection overruled & defendant's counsel duly excepted.)

A. Yes; galvanized iron is iron dipped into a bath of zinc—coated with zinc.

Q. And what is galvanized tin?

(Objected to as before. Objection overruled and def't's counsel duly excepted.)

A. Galvanized tin is when the iron is first covered with tin and then dipped in zinc; or, in other words, tin plates galvanized. The term galvanized applies whether the process is the result of an electric battery or not. The process is always done, as I supposed—I don't know practically—always done by a bath.

55 DEFENDANT'S COUNSEL. Do you know anything about it?

A. Not directly; only as I tell you.

DEFENDANT'S COUNSEL. Then I move to strike out this testimony as to process, on the ground that the witness is incompetent to testify.

By the COURT:

How long have you bought and sold the articles called galvanized tin and galvanized iron?

A. About 25 years. I am more familiar, I should say, with galvanized iron. We have never dealt in galvanized tin.

(Motion of def't's counsel to strike out testimony denied, and defendant's counsel duly excepted.)

On cross-examination by def't's counsel, among other things the testimony of witness was as follows:

The article galvanized iron is not the article tin plates; the article tinned sheet iron is not the article galvanized iron; sheet iron tinned is not coated by an electric battery that I am aware of; I am not positive that sheet iron galvanized is not coated by an electric battery; I know it is coated by a bath; it may be coated in some other way that I am not aware of; it may be coated in two ways; tin plates when
56 they are thus coated by the galvanic battery are a little different article from the ordinary tin and terne plates of commerce. In the trade they are known as galvanized plates, because they are the tinned plates with an admixture of zinc in the bath; there is an article of commerce that is made of sheet iron and is galvanized, and there is an article of commerce that is the tinned plate of commerce galvanized; with that exception there is not, that I am aware of, any other article of commerce that is coated otherwise than by an electric battery, that is, made of iron in sheets and tinned. There is nothing except it be the tinned plates or the terne plates of commerce; galvanization does not, I suppose, mean coated by an electric battery.

WILLIAM E. DODGE, jr., being recalled by plaintiff, & for the examination in rebuuttal, among other things testified as follows:

I have heard most of the testimony of Mr. Bruce. I have seen galvanized iron. Galvanizing of tin plates is done in England; and that I have not seen.

Q. With reference to galvanized iron, how is it done? What is the process?

(Objected to. Objection overruled and def't's counsel duly excepts.)

57 A. Galvanized iron is prepared and dipped into a bath of molten spelter or zinc through which a galvanic current passes and causes the zinc to attach itself to the iron; there is where its name comes from.

By defendant's counsel:

That is not done by electric battery, is it?

A. No, sir; it is done by galvanic battery.

Testimony closed.

The foregoing comprises substantially all of the evidence in the case. The testimony then being closed, defendant's counsel moved that the court dismiss the complaint, or direct the jury to find a verdict for the defendant, upon the ground that the plaintiffs had not made out a case of illegal exaction of duty, and that no sufficient evidence had been adduced tending to establish an illegal exaction by the collector; and that no prima facie case of illegal exaction of duty had been made out.

The plaintiff's counsel also moved the court to direct a verdict for the plaintiff upon the ground that there was no disputed question of fact in the case, and that the question at issue was simply one of law.

58 Counsel upon both sides were fully heard upon the questions of law which were submitted in said respective motions. No claim having been made that there were any disputed questions of fact for the jury, and there being, in the opinion of the court, no question of fact for the jury to pass upon, and the question at issue between the respective parties being simply one of law, the court denied the motion of the defendant, and directed a verdict for the plaintiff for the sum of $16,647.95, principal in gold, and $2,690.02 interest in currency, and the jury in accordance with said direction thereupon rendered a verdict accordingly.

To the refusal to grant the motion of the defendant for a non-suit, and to the direction of a verdict for the plaintiff, the defendant duly excepted.

After the direction to the jury to render a verdict for the plaintiff, and before the verdict was entered by the clerk or recorded, the counsel for the defendant claimed the right to go to the jury upon, and requested the court to submit to the jury whether the phrases tin in plates,

59 or tin in sheets or plates, are, or are not, commercial *mercial* terms, or have any peculiar commercial significance.

The court refusing to submit the said question to the jury, defendant's counsel duly excepted.

The defendant's counsel also insisted upon the defendant's right to go to the jury, and requested the court to submit to the jury the question: "Whether the articles in question are or are not articles covered by the description—iron plates coated with metal—otherwise than by an electric battery." The defendant's counsel requested the court to submit

all the testimony in the case to the jury, with such instructions as to the law as to the court should seem fit.

The court refusing to submit said question to the jury, defendant's counsel duly excepted.

Counsel for defendant then requested the court to instruct the jury as follows:

"1. If the articles in question are equally covered by the description 'tin in plates or sheets, terne & taggers tin,' and by the description 'iron and tin plates * * * coated with any metal
60 otherwise than by electric batteries,' then the plaintiffs must establish that there was exacted a duty greater than the duties imposed on articles embraced within those terms of description before they are entitled to recover."

The court refusing so to instruct the jury, defendant's counsel duly excepted.

"2. The burden is upon the plaintiffs to establish the illegal character of the exaction complained of."

The court refusing so to instruct the jury, defendant's counsel duly excepted.

"3. In order to establish the illegality of an exaction of duty, the plaintiffs must affirmatively negative the presumption that the articles were not dutiable under a provision of the tariff clearly descriptive of the articles in question, and assessing duty by such description at the rate assessed or at a higher rate."

The court refusing so to instruct the jury, defendant's counsel duly excepted.

"4. The presumption is, until the contrary is shown, that the proper rate of duty has been assessed."

The court refusing so to instruct the jury, defendant's counsel duly excepted.

61 "5. At the times of the importations in question the articles imported were dutiable either at ninety per cent. of two and one half cents per pound or at fifteen per cent. ad valorem."

The court refusing so to instruct the jury, defendant's counsel duly excepted.

"6. If the amount of duties exacted by the collector did not exceed ninety per cent. of two and one half cents per pound, then the duty was properly exacted."

The court refusing so to instruct the jury, defendant's counsel duly excepted.

In respect to the item of $5,646.64, collected upon the "terne tin," so called, defendant's counsel requested the court to hold "that the duty on the articles referred to as 'terne tin,' and represented by plaintiffs' claim of $5,646.64, was properly assessed, and for that the plaintiffs are not entitled to recover."

The court refused so to decide, and defendant's counsel duly excepted.

And inasmuch as the foregoing several matter of fact and of law, and the said several exceptions so offered and made to the opinions, instructions, and decisions of the court do not appear upon the record of the trial, therefore, on the prayer of the said defendant, by his counsel
62 the said judge has signed the foregoing as and for the bill of exceptions in this cause nunc pro tunc as of the 16th day of November, 1876, and at the October term aforesaid directed the same to be filed accordingly.

[L. S.] N. SHIPMAN, *Judge.*

(Endorsed:) U. S. circuit court southern district of New York. Wm. E. Dodge & als. versus Chester A. Arthur. Proposed bill of exceptions. Stewart L. Woodford, United States attorney for the southern district of New York.

Due service of a copy of the within, and of the notice above, admitted this thirteenth day of March, 187 .

M. & P.,
Pl'ff's Att'ys.

U. S. circuit court.

Filed Jun. 26, 1877.

JOHN I. DAVENPORT, *Clerk.*

To Evarts, Southmayd & Choate, pl'ffs' attorneys.

63 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-seven.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
against
WILLIAM E. DODGE, DANIEL JAMES, JAMES Stokes, William E. Dodge, jr., D. Willis James, Anson P. Stokes, Charles C. Dodge, & Thomas Stokes, defendants in error.

Afterwards, to wit, on the second Monday of October, in this same term, before the Justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Chester A. Arthur, by Steward L. Woodford, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendants against the
64 said plaintiff; whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid, and other errors in the record and proceeding aforesaid, as the same appears more fully therein, may be reversed, annulled, and altogether held for nothing, and that he, the plaintiff, may be restored to those things which he has lost by reason of the said judgment.

STEWART L. WOODFORD,
United States Attorney for the Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, versus William E. Dodge & al., defendants in error. Assignment of error. Stewart L. Woodford, United States attorney for the southern district of New York.

U. S. circuit court.

Filed Jul. 23, 1877.

JOHN I. DAVENPORT, *Clerk.*

To Man & Parsons, attorneys for def'ts in error.

65 UNITED STATES OF AMERICA, *ss:*

To William E. Dodge, Daniel James, James Stokes, William E. Dodge, jr., D. Willis James, Anson P. Stokes, Charles C. Dodge & Thomas Stokes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and seventy-seven, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this nineteenth day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

ALEX'R S. JOHNSON,
U. S. Cir. Judge.

66 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against William E. Dodge & others, defendants in error. Citation.

Due & timely service of the within citation is hereby admitted.
New York, Feb'y 19th, 1871.

MAN & PARSONS,
Def'ts in Error.

Filed Feb'y 20, 1877.

(Indorsement on cover:) No. 206. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. William E. Dodge, Daniel James, James Stokes, William E. Dodge, jr., D. Willis James, Anson P Stokes, Charles C. Dodge, & Thomas Stokes, as Phelps, Dodge & Co. S. New York, C. C. U. S. Filed 2nd October, 1877.

W. J. Read, Law and Job Printer, 116 Fulton Street, N. Y.

OFFICE SUPREME COURT U. S.
FILED
FEB 28 1880
D. W. MIDDLETON, Clerk.

U. S. Supreme Court.

Chester A. Arthur, Collector, &c.,
Plaintiff in Error,
vs.
William E. Dodge, *et al.*,
Defendants in Error.

No. 206.
October Term, 1879.

STATEMENT.

The defendants in Error, Messrs. Phelps, Dodge & Co., imported into the Port of New York, subsequently to June 22, 1874 (the date of the approval of the revision of the statutes), sundry invoices of tin plates and terne tin, upon which Collector Arthur exacted a duty of fifteen per centum *ad valorem*. Messrs. Phelps, Dodge & Co. claimed that the goods were only dutiable at ninety per cent. of that rate.

The duty was paid under protest; appeals were duly made to the Secretary of the Treasury; he affirmed the decision of the Collector; and this suit was commenced for the excess exacted by the Collector over the amount admitted to be due (p. 9, fols. 22, 23).

At the close of the evidence the counsel for each side asked the Hon. Nathaniel Shipman, sitting as Circuit Judge in the Southern District of New York, where the suit was brought, to direct a verdict, the case only presenting questions of law; the Judge decided in favor of Messrs. Phelps, Dodge & Co., and directed a verdict for $16,647.95, and interest for them (fols. 57, 58).

The excess of duty consists of $5,646.64 upon terne plates, and $11,012.74 upon tin plates, according to a calculation made by the liquidating clerk of the Custom House (fol. 53). The Collector comes to this Court upon exceptions to the rulings of the Circuit Court.

ARGUMENT.

First.—The duty upon tin plates and terne tin under the Act of June 22, 1874, is ninety per cent. of fifteen per centum *ad valorem*.

The Act provides as follows:

1. "Sec. 2503.—There shall be levied, collected and paid, upon all articles mentioned in the schedules contained in the next section, imported from foreign countries, the rates of duty *which are by the*

schedules respectively prescribed: Provided, that on the goods, wares and merchandise in this section enumerated and provided for, imported from foreign countries, there shall be levied, collected and paid *only ninety per centum of the several duties and rates of duty imposed by the said schedules* upon the said articles severally, that is say:" * * * *

"On all iron and steel, and on all manufactures of iron and steel, of which such metals or either of them shall be the component parts of chief value, excepting cotton machinery."

"On all metals not herein otherwise provided for, and on all manufactures of metals of which either of them is the component part of chief value, excepting percussion caps, watches, jewelry, and other articles of ornament provided," &c.

"SEC. 2504, Schedule E.—METALS: * * * * Tin in plates or sheets, terne and taggers' tin fifteen per cent. *ad valorem.*"

"Iron and tin plates galvanized or coated with any metal by electric batteries, two cents per pound."

"Iron and tin plates galvanized or coated with any metal otherwise than by electric batteries, two and-one-half cents per pound."

* * * * *

Upon the two latter paragraphs depends one of the positions contended for by the Collector.

2. Tin plates are a well-known article of commerce; they consist of plates of sheet iron which, having been carefully prepared so as to clean the surface of scales, have been plunged into a bath of molten tin and so have been coated with the latter metal.

Terne tin is tin plate used for roofing purposes. A slight admixture of lead is added to the molten tin bath, the effect of which is to dull the color.

Evidence for Defendants in Error, fols. 25, 26, 27, 29.
Evidence for Plaintiff in Error, fols. 46, 51.

3. Tin and terne plates are manufactures of iron; iron is the component part of chief value (fols. 40, 42–45).

The Act of June 22, 1874, does not provide that tin and terne plates shall not be entitled to the ninety per centum provision. In other words they are *not herein otherwise provided for.*

Under each of the above enumerations tin plates and terne tin are entitled to the benefit of the ninety per centum provision. It applies to all manufactures of iron of which it is the component part of chief value; to all manufactures of metals of which either of them is the component part of chief value; and to all metals not otherwise provided for; that is to say, as to which the Act does not in terms withhold the ten per cent. reduction.

4. The Collector did not maintain the contrary of this upon the trial, if the question were to be determined upon the language of the Revision Act.

5. The point was made by the Collector that the protest was not couched in terms to meet the several provisions of Sec. 2503, (fol. 30). This was a misapprehension. The protest refers generally to Sec. 2503, and specially to each of the subdivisions relied upon (fol. 23).

Second.—The articles in question are the articles described as tin in

plates and terne tin in the Act of June 22, 1874, and in earlier Acts of Congress.

1. The article described as "tin in plates" is well known by that name (fols. 25, 33, 34), though it is more frequently called "tin plates" for short. As has been stated, it consists of a plate of sheet iron coated with tin. The term more generally used, "tin plates," and that used in the Acts of Congress, "tin in plates," are synonymous.

This was proved by the evidence for Messrs. Phelps, Dodge & Co., and was even more fully established by the testimony for the Collector.

JOHN S. DICKERSON, the Collector's merchant witness testified (fol. 49): "I have always called them "tin plates," although they were in the tariff as "tin in plates." I have treated the terms as synonymous."

LEWIS MCMULLEN, examiner in the metal department of the Custom House, the Collector's other witness, testified (fol. 52): "Q. During the past ten or fifteen years at the Custom House, have you and the merchants with whom you have dealt had continuously occasion to apply the term 'tin in plates' to a particular commodity? A. Yes, that is the commodity which I describe as tin plates."

2. No question was made that the designation "terne tin," as used in the Acts describes the commercial article of that name.

The association in the same classification of "tin in plates" with "terne tin" shows that the article commercially known as "tin plates" was intended. Terne tin is a description of tin plate (fol. 32). The maxim *noscitur a sociis* applies.

Third.—The articles in question do not come within the classification of "iron and tin plates, galvanized or coated with any metal otherwise than by electric batteries," upon which a duty of two and one-half cents per pound is imposed.

1. Being known as "tin plates" or tin in plates," it is to provisions of Acts of Congress which apply to articles of that name that reference must be made for the rate of duty.

Arthur v. Morrison, 96 U. S., 108, and cases there cited.

2. There are articles known to commerce as galvanized iron and tin plates; they differ altogether from tin and terne plates (fols. 54-57). It is to them that the above provision must be assumed to apply. They consist of tin or iron plates galvanized by being dipped in zinc or spelter.

3. The collector not only did not prove that the articles in question were galvanized iron or tin plates, but the defendants in error proved the reverse.

The Court therefore properly rejected all testimony, and refused to charge to the jury all propositions which depended upon the claim that the articles were galvanized iron or tin plates (fols. 33, 36, 37, 50, 52, 60, 61).

4. This question does not depend upon contradictory testimony.

It being insisted by both sides that the case presented only questions of law (fols. 57-8) the duty of the Judge was to direct a verdict. After he had done so the defendant had no right to withdraw and to claim the privilege of going to the jury, even if there had been a dispute as to facts. Parties cannot thus speculate upon the decision of a Court.

Hendrick v. Lindsay, *et al.*, 3 Otto, 143.
Appleby v. The Astor Fire Ins. Co., 54 N. Y., 253.

Here there was no conflict of evidence Instructions to a jury in such a case would be an empty ceremony.

Had it been otherwise, the requests submitted by the Collector proceeded upon a view of the law either erroneous or not justified by the evidence in the case.

Fourth.—The case depends upon the effect to be given to the Revision Act of June 22, 1874. This is really the only substantial question in the case.

1. The preceding Act was passed on June 6, 1872.

Sec. 2 of that Act established the ninety per centum provision. It states that it was the intention to reduce *existing* duties on the articles enumerated ten per centum: "The duty is to be ninety per centum of the several duties and rates of duty *now imposed* by law."

Sec. 4 of the same Act makes the duty on tin in plates or sheets, terne and taggers' tin fifteen per centum *ad valorem*.

At the time of the passage of that Act tin plates and terne and taggers' tin were dutiable under the Act of July 14, 1862, at twenty-five per centum *ad valorem*. That was the "existing" duty, the duty "now imposed," &c., when the Act of June 6, 1872 was passed.

The Treasury Department therefore held that the ten per centum reduction could not apply to the fifteen per cent. duty fixed by the Act of June 6, 1872, itself; that if it applied at all it would be to the twenty-five per centum then existing duty.

2. The revised act of June 22, 1874 (secs. 2503, 2504), embraces much of the Act of June 6, 1872. It in terms fixes the duty on tin in plates or sheets, terne and taggers' tin, which were specifically provided for in the former act.

The revised act (act of June 22, 1874) differs however from the act of June 6, 1872, in that the latter makes the ninety per centum provision apply to duties then (*i. e.* at the time of its passage) existing, while the former (the revision act) makes it apply to the "duties and rates of duty imposed by the several schedules" which form part of the revised act.

3. This being so, if there had been no express repealing provision in the revised act, it would, according to well recognized principles, have repealed the corresponding provisions of the Act of June 6, 1872.

(*a*) The duty imposed by the revised act certainly was not intended to be cumulative. It could not have been the purpose of Congress to impose a double duty. If not, to which act is reference to be made for the state of the law? Clearly to the latter.

(*b*) The provisions are inconsistent, and unless the latter act is cumulative it necessarily operates as a repeal of the former.

Norris v, Crocker. 13 How., 429.
U. S. v. Tynen, 11 Wall, 88.
Bartlett v. King, 12 Mass., 537
Commonwealth v. Cooley, 10 Pick., 36.

Fifth.—Section 5596 of the revision, in terms repeals the Act of June 6, 1872, as to the articles in question.

That section reads: "All Acts of Congress passed prior to said first "day of December, 1873, any portion of which is embraced in any section "of said revision are hereby repealed, and the section applicable thereto "shall be in force in lieu thereof; all parts of such acts not contained in "such revision having been repealed or superseded by subsequent acts or "not being general or permanent in their nature."

1. Sections 2503 and 2504 embrace a large part of the Act of June 6, 1872.

The repealing provision in direct and unqualified terms applies therefore to that act. Those sections are in force in lieu thereof.

2. The statement that all parts of acts not contained in the revision had been repealed or superseded by subsequent acts, does not qualify the effect of the positive repeal of all acts, sections of which are embraced in the revision.

That statement at the most constitutes a declaration by Congress of what was its view of the condition of the statutory law. It is quite immaterial whether Congress was correct or in error.

Aldridge v. Williams, 3 How., 1.
Hadden v. The Collector, 5 Wall, 107.

To permit erroneous views by legislators, whether of fact or of law to nullify or affect their clearly expressed enactments, would imperil all legislation. Where expressions free from uncertainty or ambiguity are used in a statute they determine its construction.

It is true that all parts of an act, including its title, the situation of the law at the time, the condition of facts out of which the legislation grew, may be referred to for the purpose of reaching the legislative intention.

Preston v. Browder, 1 Wheat., 115.
U. S. v. Palmer, 3 Wheat., 610.

But no inference to be drawn therefrom can prevail against direct positive, and unequivocal language.

U. S. v. Warner, 4 McLean, 463.
U. S. v. Fisher, 2 Cranch, 358.
Ogden v. Strong, 2 Paine, 584.
Bidwell v. Whitaker, 1 Mich., 469.
Bradbury v. Wagenhorst, 54 Pa. St., 180.
Farrell Foundry v. Dart, 26 Conn., 376.
Pearce v. Atwood, 13 Mass., 324.
Doane v. Phillips, 12 Pick., 223.

3. The same principles of construction apply to the revised statutes as to any other Act of Congress, with this difference in favor of the revision, that it must be assumed that it was the intention of Con-

gress to supersede pre-existing legislation in respect of matters with which the revision deals.

Peck v. Pease, 5 McLean, 486.
Ellis v. Paige, 1 Pick. (Mass.), 43.
Rutland v. Mendon, id., 154
Buck v. Spofford, 31 Maine, 34.
Commonwealth v. Cooley, 10 Pick., 37.

The title of the revised statutes is: "An act to revise and consoli-"date the statutes of the United States in force on the first day of "December, *Anno Domini* one thousand eight hundred and seventy-"three." It begins as any other Act of Congress: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled," etc.

To hold that the principles by which the repealing effect of other statutes is to be adjudicated do not apply to the revised statutes, would be to defeat entirely the purposes of the revision. It would be to make always necessary an examination of the pre-existing law, with added confusion from the revision. The result would be not to revise and consolidate, but to throw added doubt and uncertainty upon the mass of statutes in force at the time.

Sixth.—Arthur *vs.* Rheims, 96 U. S., 143, Movius *vs.* Arthur, 95, U. S. 144, Faxon *vs.* Russell and similar cases, do not apply.

1. In Arthur *vs.* Rheims for example, the words, "On all manufactures of cotton of which cotton is the component part of chief value," in the ninety per centum provision *of the act of June* 6, 1872, were held not to apply to artificial flowers, though made of cotton, because they were dutiable *eo nomine* under the act of June 30, 1864.

The Act of June 30, 1864 and the act of June 6, 1872, were not in existence when the present question arose.

2. The ninety per centum provision of section 2503 of the revised statutes in terms applies *to the articles mentioned in the schedules* contained in section 2504. The description in section 2503 is general; of classes. The schedules in section 2504 are referred to for the details. "Iron and steel, and manufactures of iron and steel of which such metals, or either of them shall be the component part of chief value," and "all manufactures of metals of which either of them is the component part of chief value," the terms used in section 2503, and to which by that section the ten per cent. reduction is given, do not appear at all *eo nomine* in section 2504.

3. Meyer *v.* Arthur, 91 U. S. 570, is directly in favor of the defendants in error upon the very question.

The point there was whether white lead, &c. were entitled to the ten per cent. reduction under the act of June 6, 1872. The Court held not; but for the reason that *they were not manufactures of metals.* They were, as the Court held, articles in which the metals had lost their form entirely, and had become the chemical ingredients of new articles.

The language of Mr. Justice BRADLEY is (page 576): "*When the Act speaks of manufactures of metals, it obviously refers to manufactured articles in which metals form a component part.* When we speak of manufactures of wood, of leather, or of iron, we refer to articles which have those substances respectively for their component

parts, and not to articles in which they have lost their form entirely and have become the chemical ingredients of new forms."

Tin plates and terne tin *are* manufactured articles in which the metal iron forms the component of chief value.

The reasoning of this case is directly in favor of allowing the ten per cent reduction to such articles.

4. Section 2503 gives the ten per cent. reduction from schedule rates to "all metals not herein otherwise provided for, and all manufactures of metals of which either of them is the component part of chief value, *excepting percussion caps, watches, jewelry, and other articles of ornament.*"

The exception shows conclusively that Congress intended by the general term, "all metals," &c., to describe classes of metals and of manufactures of metals, referring to the schedules for the articles that would come within the classification. If the terms "metals" and "manufactures of metals" were used *nominatim* there would be no propriety in excepting percussion caps, watches, jewelry and other articles of ornament.

Nothing can be taken out of a class by a proviso which is not there to be taken out. Percussion caps, for example, are manufactures of metals, and they are excepted from the benefit of the ten per cent. reduction *nominatim*, because otherwise they would be entitled to the reduction as being manufactures of metals.

In like manner tin plates and terne tin are entitled to the reduction, they also being manufactures of metals because they are not excepted in section 2503, or otherwise provided for in section 2504.

To limit the application of the section to articles of that name would be to nullify it altogether This absurdity would result; Congress would gravely undertake to reduce by ten per cent. duties on articles which were not dutiable at all.

5. An illustration of the same principle will be found by a reference to this provision of the metal schedule (Schedule E) of section 2504: "It is provided that no allowance or reduction of duties for partial loss or damage shall be hereafter made in consequence of rust of iron or steel, or upon the manufactures of iron or steel, except on polished Russia sheet iron."

Polished Russia sheet iron is here treated as coming within the general classification of manufactures of iron, and, unless it were specially excepted, it would be deprived of a reduction of duty for rust. No such reduction would be allowed to tin plate or terne tin; not because there is a special provision depriving them of this allowance, but because they are manufactures of iron and come within a general class which is deprived of this allowance.

6. The only articles mentioned in Schedule E which in name correspond at all with the designations in section 2503 are * * * * "all manufactures of steel, or of which steel shall be a component part, "*not otherwise provided for*"; * * * "manufactures * * *not otherwise* "*provided for* of * * tin or other metal * * or of which either of these "metals shall be the component material of chief value;' upon each of which *ad valorem* duties are imposed.

The schedule description is a limited one. It does not apply to the articles named generally, but only to such as are not otherwise provided for. And the designation, if there were no qualification, is not broad enough to embrace all the classes described in section 2503.

The classification in section 2503 is general; the reduction is given not to manufactures of iron and steel *not otherwise provided for*, but to *all* manufactures of iron and steel of which either is the component part of chief value.

Again, the reduction is given by section 2503 to manufactures of which iron is the chief component of value. No such article in name is mentioned in section 2504, and yet the reduction is to be from the rate of duties mentioned in that section. Unless it is assumed that such schedule articles as tin plates, terne tin, &c., were intended, this part of section 2503 becomes meaningless.

It thus appears that the enumeration in section 2503 was intended to be an enumeration of classes. This conclusively appears from the fact that the schedules which mention only specifically named articles must necessarily be referred to for the purpose of ascertaining the duties to which the reduction applies.

7. It may well be that Congress, in passing the revision act was of the opinion that the reduction section of the earlier Act of June 6, 1872, was intended to create classes so that the reduction would be available for specifically named articles coming within the classes. It was not unreasonable that Congress should be of this opinion.

That such was the effect of the Act of June 6, 1872, was decided in the lower Courts in Arthur *v* Rheims and other cases. It is believed that it was universally accepted as the true construction by Custom House authorities.

Even if Congress were in error in this regard, as has been previously argued that would not affect the act. What is to be assumed (and this suggestion applies to the whole argument) is, that Congress intended what it said by sections 2503 and 2504; and, if the declaration of section 5596 is to be regarded at all, that it should be held to be a declaration that in the opinion of Congress the previously existing law corresponded with what Congress enacted as the law by the revision.

8. The term "not otherwise provided for," applied to manufactures of steel or other metal in the metal schedule of section 2504 shows that the term "manufactures," &c., includes specifically named articles. There are no others to which it can apply.

The general term "all manufactures," &c., in section 2503 apply to the same. Otherwise the reduction provision would have no effect. There would be no rate from which to make the reduction and there would be no duty to be reduced. Section 2503 imposes no duty.

Seventh.—The ten per cent. reduction clause in section 2503 of the Revised Statutes was repealed by section 4 of the Act of March 3, 1875. That section indicates that in the view of Congress the reduction was generally applicable to the articles specified in the schedules in section 2504.

Eighth.—As bearing upon the general purpose of Congress in enacting the revision of the statutes, it is proper to call attention to cases where the revision increases previously existing duties. The cases are very numerous.

They are referred to in the letter of the Secretary of the Treasury to the

House of Representatives, dated January 11, 1875 (Executive Document No. 82 Forty-third Congress). The following are samples:

Page 45: Blay linens, &c., increased from 30 to 35 per cent. and 35 to 40 per cent.
Argols from three to six cents per pound.
Castile soap from 35 per cent. to one cent per pound, and 30 per cent. *ad valorem.*
India-rubber (manufactures of) from 20 per cent. to 25 per cent.
Paintings or glass for churches, from free to 40 per cent.

Page 48: Bottled ale, &c., 10 per cent., allowance for breakage omitted from Revised Statutes.
Mixed materials 35 per cent., omitted.

Page 51: Spirits costing over $4 per gallon from $2 per gallon to 50 per cent. *ad valorem*

Pages 53–55: Rates increased on camels' hair, skins, manufactures of wool, cottons, flax goods, beeswax.

The policy of giving effect to the Revised Statutes as containing the complete body of statute law applicable to all subjects with which it deals, does not admit of question. Where changes are necessary Congress can amend; but it ought not to be necessary to go back of the revision in respect of matters which are clearly provided for there.

Last.—The judgment should be affirmed and a mandate issued accordingly.

JNO. E. PARSONS,

for Defendants in Error.

OFFICE SUPREME COURT U. S.
FILED
MAR 16 1880
D. W. MIDDLETON, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

ARTHUR, PLAINTIFF IN ERROR,
vs.
DODGE ET AL. } No. 206.

BRIEF FOR THE UNITED STATES.

This is a suit brought by an importer to recover back an excessive duty, exacted, as is said, upon certain goods.

Between the 28th of August, 1874, and the 18th of October, 1874, Phelps, Dodge & Co., the defendants in error, imported, at New York, certain articles known as "tin in plates," "terne plates," and "taggers' tin," and the question is as to the rate of duty then payable thereupon.

The plaintiff in error, as collector, exacted a duty of 15 per cent., under section 2504 of the Revised Statutes, whereas the defendants in error claimed that the proper duty was only 90 per cent. of that amount, by virtue of section 2503.

The statutory provisions referred to are as follows:

SEC. 2503. There shall be levied, collected, and paid upon all articles mentioned in the schedules contained

in the next section, imported from foreign countries, the rates of duty which are by the schedules respectively prescribed: *Provided*, That on the goods, wares, and merchandise in this section enumerated and provided for, imported from foreign countries, there shall be levied, collected, and paid only 90 per centum of the several duties and rates of duty imposed by the said schedules upon said articles, severally, that is to say:

* * * * * *

On all iron and steel, and on all manufactures of iron and steel of which such metals or either of them shall be the component part of chief value, excepting cotton machinery.

On all metals not herein otherwise provided for, and on all manufactures of metals of which either of them is the component part of chief value, excepting percussion-caps, watches, jewelry, and other articles of ornament: *Provided*, That all wire rope and wire strand or chain made of iron wire, &c., &c.

* * * * * *

SEC. 2504 (p. 467). Tin in plates or sheets, terne and taggers' tin: Fifteen per cent. ad valorem.

These provisions were taken from the act of 1872, ch. 315 (17 Stat., 231), where they appeared in the following form:

SEC. 2. That on and after the 1st day of August, 1872, in lieu of the duties imposed by law on the articles in this section enumerated, there shall be levied, collected, and paid on the goods, wares, and merchandise in this section enumerated and provided for, imported from foreign countries, ninety per centum of the several duties and rates of duty imposed by law upon the said articles severally, it being the intent of this section to reduce existing duties on said articles ten per centum of such duties, that is to say:

* * * * * *

On all iron and steel, and on all manufactures of iron

and steel, of which such metals, or either of them, shall be the component part of chief value, excepting cotton machinery.

On all metals, not herein otherwise provided for, and on all manufactures of metals of which either of them is the component part of chief value, excepting percussion-caps, watches, jewelry, and other articles of ornament: *Provided*, That all wire rope and wire strand or chain made of iron wire, &c., &c.

SEC. 3. On tin in plates or sheets, terne and taggers' tin, fifteen per cent. ad valorem.

On iron and tin plates galvanized or coated with any metal by electric batteries, two cents per pound.

It is plain, and is conceded in the brief of the learned counsel for the defendants in error, that the *ninety per centum provision* of the act of 1872 did not apply to the duties levied (*in the same act*) upon *tin in plates* and *sheets*, *terne* and *taggers' tin*, because, if for no other reason, these duties were not the duties "*now* imposed by law upon said articles," or "*existing* duties," within the words of the second section (above).

But it is contended on behalf of these defendants that the wording of the above provisions of the Revised Statutes upon the same subject, which were those in force at the time of the importation in question, had been so altered as to make such reduction applicable at that time to those duties: In other words, that the ninety per centum provision in the Revised Statutes is in terms applicable to the duties imposed "*by the said schedules*" upon *all iron and steel*, *all manufactures of iron and steel*, &c., *all metals not herein otherwise provided for*, and *all manufactures of metals*, &c., and *that one of such schedules*

does impose a duty of fifteen per cent. upon tin in plates and sheets, terne and taggers' tin.

The provision making such reduction has been repealed. Act of March 3, 1875 (18 Stats., 340).

The errors assigned are:

I. That the court allowed to the plaintiffs below the benefit of their protest upon that part of their contention which asserted that the articles imported were *iron*, or manufactures thereof, or manufactures of which iron was the component part of chief value.

II. That judgment was not given for the defendants below, instead of for the plaintiffs.

I. As to the protest.

This is given at length upon folio 22 of the record. The *grounds* thereof are thus stated: "Because title 33, section 2503, of the codification of the revenue laws provides certain rates of duty on articles which are mentioned in Schedule E of section 2504, with the provision that all articles mentioned in 2503 shall have the benefit of ten per cent. reduction—one of the provisions—on all metals not herein otherwise provided for, and on all manufactures of, &c., includes tin plates," &c.

Upon the trial (folio 39) the plaintiffs offered evidence to show that *iron* was the component part of larger value in tin plates, and tin in plates. This was objected to as irrelevant, inasmuch as the protest confined the plaintiffs to a construction that the duty was improperly exacted, because the articles imported were *metals*, &c.—*i. e.* were included within the last of the paragraphs above quoted from section 2503, instead of the next to the last. This objection was overruled.

It is submitted that this was error; but inasmuch as the admission of that evidence, as well as the record in general discloses that the court was of opinion that the protest was a sufficient foundation for a recovery for duties improperly exacted upon *iron* and *manufactures* thereof, &c., the assignment of error has been made in more general form than that of a mere objection to or ruling in regard to testimony.

The protest notified the collector that the articles were *metals*, &c. (*not iron*, &c.). If they were included in the second of the two paragraphs quoted from section 2503, they could not be so in the first. All that the importer required the collector to decide was whether they were *metals*, &c., within the latter paragraph. If he concluded that they were not and was correct in this, that was an end of the importer's contention. What gives a specific character to the grounds of protest here is the *designation* by the importer of the article in question. That designation is not, that in general they were included in section 2503 (*i. e.* amongst the *hundred* articles therein mentioned or implied), but that they were the very things mentioned in the protest.

The whole matter has been so thoroughly explained by this court in the late case of Davies *vs.* Arthur, 96 U. S., 148, that it is unnecessary to say more.

II. As there was no sufficient protest, judgment should have been given in favor of the defendants.

S. F. PHILLIPS,
Solicitor-General.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1878.

NO. 221.

PALMER C. SMITH and JOB R. RENICK, Administrators, etc., of RENICK HUSTON, deceased, and EDWARD J. VAN METER, Administrator, etc., of THOMAS T. RENICK, deceased.
Appellants,

vs.

J. C. AYER & CO., JOEL D. HARVEY, J. E. FAY, BENJAMIN F. RENICK, and others,
Appellees.

Appeal in Equity from the Northern District of Illinois.

BRIEF FOR APPELLEES.

By C. C. BONNEY,

Counsel for B. F. RENICK and J. E. FAY.

CHICAGO:
THE CHICAGO LEGAL NEWS COMPANY, 47 & 49 DEARBORN ST.

1878.

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Appellees.

Appeal in Equity from the Northern District of Illinois.

BRIEF FOR APPELLEES

By C. C. Bonney,

Counsel for B. F. Renick and J. Fay.

May it Please the Court:

The principal facts in this case are similar to those in the next case, No. 222 of the present term, of the same appellants against the same appellees, with the exception of the members of the firm of J. C. Ayer & Co., of Lowell, Mass., in place of the First National Bank of Westboro'. As counsel for the Bank, the principal appellee in the other case, I have made a much more elaborate preparation than seemed to be required at my

hands in the present case, in which the principal appellees are represented by other counsel. I therefore file in the present case a brief statement of points and authorities, and beg leave to refer, upon the argument, to my abstract and brief for the Westboro' Bank, in the succeeding case.

POINTS MADE AND AUTHORITIES CITED.

I.

Appellant's pleadings and proofs are fatally defective. They do not show a legal title, much less an equitable title, to the promissory note in controversy.

Grand Gulf R. R. Co. v. *Bryan*, 18 Miss. 234.

II.

The complainants sue as Ohio representatives of certain deceased persons, but the subject matter of controversy is a part of the Illinois assets of Thomas T. Renick, and is therefore governed by the Illinois law, or the general commercial law of the country.

1 Bouvier Inst. 83;

Story's Conflict of Laws, Secs. 512, 524, 525.

III.

The legal title to the note sued for, was duly transferred to J. C. Ayer & Co., for value paid at the time of

the transfer; and the right to assign and transfer it is unquestionable.

1 Red. Wills, 3d ed. 131, 419;
3 Ibd. 130, 137, 226, 236;
Farhall v. *Farhall*, L. R. 7 Eq. Ca. 286;
Hough v. *Bailey*, 32 Conn. 288;
Miles v. *Durnford*, 2 Simons, 239;
Whale v. *Booth*, 4 T. R. 625;
Dwight v. *Newell*, 15 Ills. 335;
Petrie v. *Clark*, 11 Serg. & R. 388.

IV.

The power granted by the will of Thomas T. Renick, is ample to authorize the pledge of the note in controversy to raise money; and to warrant the investment of the money so raised, in the printing-press works at Canton, Ohio.

Gandolfer v. *Walker*, 15 Ohio, N. S. 274;
Will of Thomas T. Renick, Secs. 1, 4, 8, 9, 11, Printed Case, p. 89.

V.

The supposed trust, which is set up by the appellants, is at best *a mere expectation*. It was not witnessed by any memorandum in writing; nor by any matter of record; and is without any force, under the statute of frauds, and for want of notice, at least as against the principal appellee.

VI.

The claim set up in the bill of complaint, is barred in equity by the concurrence and laches of the appellants, and of all the parties in interest, for whom they claim.

See dates of the principal events in the case.
Sloan v. *Graham*, 9 Legal News, 374;
Miles v. *Durnford*, 2 Simons, 239;

VII.

The note was not due when it was transferred to Ayer & Co. The extension of the time of payment by contract, operated to make the note the same in legal effect, as though originally made payable at the end of the extension. But even if overdue, the case shows no defense.
1 Parson's Contracts, 256, and cases cited.

VIII.

The transfer of the note in controversy to J. C. Ayer & Co., can not be impeached, *unless for actual fraud;* and no charge of such fraud is made in the pleadings, or shown by the proofs.
1 Daniel Nego. Inst. Secs. 184, 584, 769 to 777, 824 and cases cited;
1 Parson's Con. 254–5;
Walker et al. v. *Craig*, 18 Ills. 116.

IX.

The power of the executor of Thomas T. Renick, to pledge the note to J. C. Ayer & Co., for money advanced at the time, is perfectly clear.
Gordon v. *Preston*, 1 Watts, 385;
Jackson v. *Brown*, 5 Wend. 594;
Curtis v. *Leavitt*, 15 N. Y. 161;
Petrie v. *Clark*, 11 Serg. & R. 388;

Russell v. *Plaice*, 18 Beavan, 21;
Perry on Trusts, Sec. 225, and cases cited;
3 Red. Wills, 231;
Goodman v. *Simonds*, 20 How. 343;
Murray v. *Lardner*, 2 Wall. 110;
White v. *Springfield Bank*, 3 Sandf. 222;
N. Y. M. Iron Works v. *Smith*, 4 Duer, 362;

X.

Even B. F. Renick, the executor, whose good faith is not impeached, could not be held liable for any loss arising from the pledge of the note, and the investment of the money; and much less can Ayer & Co., to whom he transferred the note in controversy, be held responsible for any such loss.

3 Red. Wills, 413;
Christy et ux. v. *McBride*, 1 Scam. 78;
Rowan v. *Kirkpatrick*, 14 Ill. 1;
Walker et al. v. *Craig*, 18 Ill. 116;
Williams on Executors, 796;

Applying the principles of the foregoing authorities to the present case, I respectfully submit that the decree of the Court below should be affirmed.

I have not as yet received the abstract, points and authorities of counsel for appellants, and therefore can not now submit any reply thereto. But I desire to reserve the privilege of such reply, in case it should seem expedient, after an examination of appellant's brief.

L. L. Bonney,

Counsel for B. F. Renick and J. E. Fay.

156 Washington Street, Chicago.